REMARKS

Claims 1-4 stand rejected under 35 U.S.C. stand rejected under 35 U.S.C 103(a) as being as being unpatentable over Takeuchi et al. (U.S. Patent No. 6,321,260). Claims 1-4 are pending.

Applicants respectfully submit that the pending claims, as amended, are patentable for at least the following reasons.

Claim 1 recites "determining, **after transmission of the data packets begins,** in the first part or interface, the number of data packets being transmitted in a predetermined time..." Independent claim 3 recites similar limitations.

Takeuchi fails to teach show or imply at least the limitations of determining, **after transmission of the data packets begins,** in the first part or interface, the number of data packets being transmitted in a predetermined time..." as recited in amended independent claim 1.

The Office Action points to col. 15, lines 63-67 & col. 4, lines 1-14 to show these limitations. Applicants respectfully notes that col. 15, lines 63-67 refers "the sending control module" that is used for data transfer only after a control message is used to determine the packet size, transfer rate, etc... Moreover, this

control message is sent BEFORE the information processor starts the data transfer, see col. 3, line 64 through col. 4 line 14. This is clearly indicated in the data communication method of Takeuchi, before starting to transfer continuous media data to the receiver node (102), the sender node (101) sends the control message...see col. 5, lines 42-51.

Thus, Takeuchi does not teach or imply "determining, **after transmission of the data packets begins,** in the first part or interface, the number of data packets being transmitted in a predetermined time...," as recited in claim 1.

The Office Action indicates that one of ordinary skill in the art at the time of the invention can interpret "after the transmission of the data packet" as after establishing a connection between both ends than start sending data packets,... Applicants respectfully disagree with the Office Action's conclusory statement. In In re Lee, Slip Op. 00-1158 (Fed. Cir. Jan. 18, 2002) the court indicated that:

> The determination of patentability on the ground of unobviousness is ultimately one of judgment. In furtherance of the judgmental process, the patent examination procedure serves both to find, and to place on the official record, that which has been considered with respect to patentability. In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The board cannot rely on

conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

A data packet is a term of art that is well know, generally, a control portion and a payload portion, for example an ATM, IEEE1394 or MPEG-4 data packet. Thus, the control message of Takeuchi, see FIG. 7, is not a data packet, since only the control portion is present. Accordingly, Applicant traverses these rejections, and respectfully requests that the Examiner's positions be supported by a reference, as per MPEP 2144.03.

For at least the above cited reasons, Applicant submits that independent claims 1 and 3 are patentable over Takeuchi.

The other claims in this application are dependent upon the independent claims discussed above and are therefore believed patentable once the independent claims are allowed.

Reconsideration and withdrawal of this ground of rejection is respectfully requested.

The applicants have made a sincere attempt to advance the prosecution of this application by reducing the issues for consideration and specifically delineating the zone of patentablity. The applicants submit that the claims, as

they now stand, fully satisfy the requirements of 35 U.S.C. 103. In view of the foregoing amendments and remarks, favorable reconsideration and early passage to issue of the present application are respectfully solicited.

Respectfully submitted,

Mail all correspondence to:
US PHILIPS CORPORATION
580 White Plains Road
Tarrytown, NY 10591

Daniel Piotrowski, Reg. 42,079
Attorney for Applicants
Phone (914) 333-9624
Fax: (914) 332-0615

By:
Rick de Pinho
Reg. 41,703

CERTIFICATE OF MAILING

It is hereby certified that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

On May 1, 2004

By

Rick de Pinho, Reg. 41,703